



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82547; File No. SR-BOX-2018-02)

January 19, 2018

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Clarify the Manner in Which the Exchange Assesses its Options Regulatory Fee

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 12, 2018, BOX Options Exchange LLC (the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the Fee Schedule to clarify the manner in which the Exchange assesses its Options Regulatory Fee (“ORF”). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission’s Public Reference Room and also on the Exchange’s Internet website at <http://boxexchange.com>.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the BOX Fee Schedule (the “Fee Schedule”) to clarify the manner in which the Exchange assesses its Options Regulatory Fee (“ORF”). Currently, the Exchange charges an ORF in the amount of \$0.0038 per contract side. The proposed rule change does not change the amount of the ORF, but instead modifies the rule text to clarify how the ORF is assessed and collected. The proposed rule change also aligns the ORF rule text of the Exchange to rule text recently adopted by Miami International Securities Exchange (“MIAX”).⁵

The per-contract ORF will continue to be assessed by BOX Options to each BOX Options Participant for all options transactions, cleared or ultimately cleared by the BOX Options Participant that are cleared by the Options Clearing Corporation (“OCC”) in the customer range, regardless of the exchange on which the transaction occurs. The ORF will be collected by OCC on behalf of BOX from either (1) a Participant that was the ultimate clearing firm for the transaction or (2) a non-Participant that was the ultimate clearing firm where a

⁵ See Securities Exchange Act Release No. 81063 (June 30, 2017), 82 FR 31668 (July 7, 2017)(SR-MIAX-2017-31).

Participant was the executing clearing firm for the transaction. The Exchange uses reports from OCC to determine the identity of the executing clearing firm and ultimate clearing firm.

To illustrate how the ORF is assessed and collected, the Exchange provides the following set of examples. If the transaction is executed on the Exchange and the ORF is assessed, if there is no change to the clearing account of the original transaction, then the ORF is collected from the Participant that is the executing clearing firm for the transaction. (The Exchange notes that, for purposes of the Fee Schedule, when there is no change to the clearing account of the original transaction, the executing clearing firm is deemed to be the ultimate clearing firm.) If there is a change to the clearing account of the original transaction (i.e., the executing clearing firm “gives-up” or “CMTAs” the transaction to another clearing firm), then the ORF is collected from the clearing firm that ultimately clears the transaction – the ultimate clearing firm. The ultimate clearing firm may be either a Participant or non-Participant of the Exchange. If the transaction is executed on an away exchange and the ORF is assessed, then the ORF is collected from the ultimate clearing firm for the transaction. Again, the ultimate clearing firm may be either a Participant or non-Participant of the Exchange. The Exchange notes, however, that when the transaction is executed on an away exchange, the Exchange does not assess the ORF when neither the executing clearing firm nor the ultimate clearing firm is a Participant (even if a Participant is “given-up” or “CMTAed” and then such Participant subsequently “gives-up” or “CMTAs” the transaction to another non-Participant via a CMTA reversal). Finally, the Exchange will not assess the ORF on outbound linkage trades, whether executed at the Exchange or an away exchange. “Linkage trades” are tagged in the Exchange’s system, so the Exchange can readily tell them apart from other trades. A customer order routed to another exchange

results in two customer trades, one from the originating exchange and one from the recipient exchange.

As a practical matter, when a transaction that is subject to the ORF is not executed on the Exchange, the Exchange lacks the information necessary to identify the order entering Participant for that transaction. There are countless order entering market participants, and each day such participants can and often do drop their connection to one market center and establish themselves as participants on another. For these reasons, it is not possible for the Exchange to identify, and thus assess fees such as an ORF, on order entering participants on away markets on a given trading day. Clearing members, however, are distinguished from order entering participants because they remain identified to the Exchange on information the Exchange receives from OCC regardless of the identity of the order entering participant, their location, and the market center on which they execute transactions. Therefore, the Exchange believes it is more efficient for the operation of the Exchange and for the marketplace as a whole to collect the ORF from clearing members.

As discussed below, the Exchange believes it is appropriate to charge the ORF only to transactions that clear as customer at the OCC. The Exchange believes that its broad regulatory responsibilities with respect to a Participant's activities supports applying the ORF to transactions cleared but not executed by a Participant. The Exchange's regulatory responsibilities are the same regardless of whether a Participant enters a transaction or clears a transaction executed on its behalf. The Exchange regularly reviews all such activities, including performing surveillance for position limit violations, manipulation, front-running, contrary exercise advice violations and insider trading. These activities span across multiple exchanges.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of Participants' customer options business, including performing routine surveillances and investigations, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange notes that its regulatory responsibilities with respect to Participant compliance with options sales practice rules have been allocated to the Financial Industry Regulatory Authority ("FINRA") under a 17d-2 Agreement. The ORF is not designed to cover the cost of options sales practice regulation.

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange will continue to monitor BOX Options regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange will notify Participants of adjustments to the ORF via regulatory circular at least 30 days prior to the effective date of the change.

The Exchange believes it is reasonable and appropriate for the Exchange to charge the ORF for options transactions regardless of the exchange on which the transactions occur. The Exchange has a statutory obligation to enforce compliance by Participants and their associated persons under the Act and the rules of the Exchange and to surveil for other manipulative conduct by market participants (including non-Participants) trading on the Exchange. The Exchange cannot effectively surveil for such conduct without looking at and evaluating activity

across all options markets. Many of the Exchange's market surveillance programs require the Exchange to look at and evaluate activity across all options markets, such as surveillance for position limit violations, manipulation, front-running and contrary exercise advice violations/expiring exercise declarations. While much of this activity relates to the execution of orders, the ORF is assessed on and collected from clearing firms. The Exchange, because it lacks access to information on the identity of the entering firm for executions that occur on away markets, believes it is appropriate to assess the ORF on its Participants' clearing activity, based on information the Exchange receives from OCC, including for away market activity. Among other reasons, doing so better and more accurately captures activity that occurs away from the Exchange over which the Exchange has a degree of regulatory responsibility. In so doing, the Exchange believes that assessing ORF on Participant clearing firms equitably distributes the collection of ORF in a fair and reasonable manner. Also, the Exchange and the other options exchanges are required to populate a consolidated options audit trail ("COATS")⁶ system in order to surveil a Participant's activities across markets.

In addition to its own surveillance programs, the Exchange works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group ("ISG"),⁷ the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. The Exchange's participation in ISG helps it to satisfy the

⁶ COATS effectively enhances intermarket options surveillance by enabling the options exchanges to reconstruct the market promptly to effectively surveil certain rules.

⁷ ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by co-operatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

requirement that it has coordinated surveillance with markets on which security futures are traded and markets on which any security underlying security futures are traded to detect manipulation and insider trading.⁸

The Exchange believes that charging the ORF across markets will avoid having Participants direct their trades to other markets in order to avoid the fee and to thereby avoid paying for their fair share for regulation. If the ORF did not apply to activity across markets then a Participant would send their orders to the least cost, least regulated exchange. Other exchanges do impose a similar fee on their member's activity.⁹

The Exchange notes that there is established precedent for an SRO charging a fee across markets, namely, FINRA's Trading Activity Fee¹⁰ and MIAX, MIAX Pearl, NYSE MKT, NYSE Arca, CBOE, Nasdaq PHLX, Nasdaq ISE, and Nasdaq GEMX ORF. While the Exchange does not have all the same regulatory responsibilities as FINRA, the Exchange believes that, like other exchanges that have adopted an ORF, its broad regulatory responsibilities with respect to a Participant's activities, irrespective of where their transactions take place, supports a regulatory fee applicable to transactions on other markets. Unlike FINRA's Trading Activity Fee, the ORF would apply only to a Participant's customer options transactions.

⁸ See Section 6(h)(3)(I) of the Act.

⁹ Similar regulatory fees have been instituted by MIAX (See Securities Exchange Act Release No. 68711 (January 23, 2013), 78 FR 6115 (January 29, 2013)(SR-MIAX-2013-01); MIAX PEARL (See Securities Exchange Act Release No. 808075 (June 7, 2017), 82 FR 27096 (SR-PEARL-2017-26); Nasdaq PHLX (See Securities Exchange Act Release No. 61133 (December 9, 2009), 74 FR 66715 (December 16, 2009) (SR- Phlx-2009-100)); Nasdaq ISE (See Securities Exchange Act Release No. 61154 (December 11, 2009), 74 FR 67278 (December 18, 2009) (SR-ISE-2009-105)); and Nasdaq GEMX (See Securities Exchange Act Release No. 70200 (August 14, 2013) 78 FR 51242 (August 20, 2013)(SR-Topaz-2013-01)).

¹⁰ See Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003)(SR-NASD-2002-148).

Additionally, the Exchange specifies in the Fee Schedule that the Exchange may only increase or decrease the ORF semi-annually, and any such fee change will be effective on the first business day of February or August. In addition to submitting a proposed rule change to the Commission as required by the Act to increase or decrease the ORF, the Exchange will notify participants via a Regulatory Circular of any anticipated change in the amount of the fee at least 30 calendar days prior to the effective date of the change. The Exchange believes that by providing guidance on the timing of any changes to the ORF, the Exchange would make it easier for participants to ensure their systems are configured to properly account for the ORF.

The Exchange also proposes to remove a sentence from the ORF section which states that Market Makers and Order Flow Providers will not be assessed the Fee until the firm has become a fully certified BOX Market Maker or Order Flow Provider, that has met and has satisfied certain minimum technological requirements necessary to be capable of commencing participation on BOX. The Exchange believes this sentence is no longer appropriate and adds confusion as to when the ORF applies.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹² in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act¹³ in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78f(b)(5).

public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes the proposed clarifications in the Fee Schedule to the ORF furthers the objectives of Section 6(b)(4) of the Act and are equitable and reasonable since they expressly describe the Exchange's existing practices regarding the manner in which the Exchange assesses its ORF.

The Exchange believes the ORF is equitable and not unfairly discriminatory because it is objectively allocated to Participants in that it is charged to all Participants on all their transactions that clear as customer at the OCC. Moreover, the Exchange believes the ORF ensures fairness by assessing fees to those Participants that are directly based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (e.g., Participant proprietary transactions) of its regulatory program.

The ORF is designed to recover a material portion of the costs of supervising and regulating Participants' customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange will monitor, on at least a semi-annual basis the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange has designed the ORF to generate revenues that, when combined with all of the Exchange's other regulatory fees,

will be less than or equal to the Exchange's regulatory costs, which is consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business side. In this regard, the Exchange believes that the current amount of the fee is reasonable.

The Exchange believes that limiting changes to the ORF to twice a year on specific dates with advance notice is reasonable because it will give participants certainty on the timing of changes, if any, and better enable them to properly account for ORF charges among their customers. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because it will apply in the same manner to all Participants that are subject to the ORF and provide them with additional advance notice of changes to that fee.

The Exchange believes that collecting the ORF from non-Participants when such non-Participants ultimately clear the transaction (that is, when the non-Participant is the “ultimate clearing firm” for a transaction in which a Participant was assessed the ORF) is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange notes that there is a material distinction between “assessing” the ORF and “collecting” the ORF. The ORF is only assessed to a Participant with respect to a particular transaction in which it is either the executing clearing firm or ultimate clearing firm. The Exchange does not assess the ORF to non-Participants. Once, however, the ORF is assessed to a Participant for a particular transaction, the ORF may be collected from the Participant or a non- Participant, depending on how the transaction is cleared at OCC. If there was no change to the clearing account of the original transaction, the ORF would be collected from the Participant. If there was a change to the clearing account of the original transaction and a non-Participant becomes the ultimate clearing firm for that transaction, then the ORF will be

collected from that non-Participant. The Exchange believes that this collection practice is reasonable and appropriate, and was originally instituted for the benefit of clearing firms that desired to have the ORF be collected from the clearing firm that ultimately clears the transaction.

Finally, the Exchange believes removing the sentence that states that the ORF will not be assessed until the firm has become a fully certified is reasonable, equitable and not unfairly discriminatory. The Exchange believes this sentence is no longer appropriate and adds confusion as to when the ORF applies. The removal of this sentence will have no effect on the assessment of fees for current BOX Participants as they are all fully certified to transact business on the Exchange. Future BOX Participants will be assessed the ORF once their application has been approved; as BOX's regulatory responsibility begins as soon as a firm becomes a Participant and not when the Participant is technologically certified.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The ORF is not intended to have any impact on competition. Rather, it is designed to enable the Exchange to recover a material portion of the Exchange's cost related to its regulatory activities. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs. Unilateral action by BOX in establishing fees for services provided to its Participants and others using its facilities will not have an impact on competition. In the highly competitive environment for equity options trading, BOX does not have the market power necessary to set prices for services that are unreasonable or unfairly discriminatory in violation of the Act. The Exchange's ORF, as described herein, is comparable to fees charged by other options exchanges for the same or similar services. The

Exchange believes that limiting the changes to the ORF to twice a year on specific dates with advance notice is not intended to address a competitive issue but rather to provide Participants with better notice of any change that the Exchange may make to the ORF.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act¹⁴ and Rule 19b-4(f)(2) thereunder,¹⁵ because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁵ 17 CFR 240.19b-4(f)(2).

- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-BOX-2018-02 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-BOX-2018-02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BOX-2018-02, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Eduardo A. Aleman
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).

